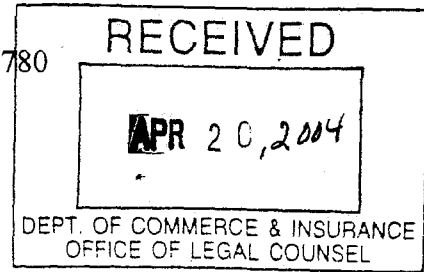


FILED**APR 21 2004****STATE OF TENNESSEE
SECURITIES DIVISION**

Rulemaking Hearing Rules
of the
Department of Commerce and Insurance – 0780
Division of Securities
Chapter 0780-4-1
General Administration

Amendments



Subparagraph (i) of paragraph (1) of 0780-4-1-.03 Definitions is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the subparagraph shall read as follows:

- (i) "Nasdaq National Market" shall mean a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security.

Authority: T.C.A. §§48-2-115 and 48-2-116(a).

Subparagraph (a) of paragraph (4) of 0780-4-1-.04 Administration of the Act is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the subparagraph shall read as follows:

(4) Forms.

- (a) An application shall be prepared in accordance with the form prescribed thereof as in effect on the date of filing. An application shall be deemed filed on the proper form unless objection to the form is made by the Division prior to the effective date of the application. The following forms, as in effect at the time of use, are approved for filing with the Division:
 - 1. U-1, Uniform Application to Register Securities;
 - 2. U-2, Uniform Consent to Service of Process (naming the Commissioner of Commerce and Insurance as the party to be served);
 - 3. U-2A, Uniform Form of Corporate Resolution;
 - 4. U4, Uniform Application for Securities Industry Registration or Transfer;
 - 5. U5, Uniform Termination Notice for Securities Industry Registration;

6. U-7, Registration Form for Small Corporate Offerings;
7. BD, Uniform Application for Broker-Dealer Registration;
8. BDW, Uniform Request for Broker-Dealer Withdrawal;
9. ADV, Uniform Application for Investment Adviser Registration;
10. ADV-H Application for a Temporary or Continuing Hardship Exemption;
11. ADV-W, Notice of Withdrawal From Registration as Investment Adviser;
12. Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption;
13. IN-0555, Surety Bond for Securities Dealers or Investment Advisers, or a Uniform Surety Bond as adopted by NASAA;
14. IN-0911, Application for Registration as an Oil and Gas Issuer-Dealer;
15. Form NF, Uniform Investment Company Notice Filing;
16. IN-1460, Form for Accredited Investors Notice Filing; and
17. IN-1461, Form for Employee Stock Option/Purchase Plan Notice Filing.

Authority: T.C.A. §§48-2-103, 48-2-110, 48-2-115(f), 48-2-116(a), 48-2-117(c); 48-2-125.

Subparagraph (c) of paragraph (5) of 0780-4-1-.04 Administration of the Act is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the subparagraph shall read as follows:

(5) Division Records.

(c) With respect to any registered agent or investment adviser representative or application for an agent's or investment adviser

representative's registration, the Division shall make available for inspection the Form U4 and Form U5 of such agent or investment adviser representative, together with all exhibits.

Authority: T.C.A. §§48-2-115(f), 48-2-116(a), 48-2-117(c); Public Acts of 1997, Chapter 164, Section 8.

Chapter 0780-4-2
Securities Registration and Exemptions

Amendments

0780-4-2-.01 Registration By Coordination is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (1) Securities may be registered by coordination with SEC registration. A registration statement and a prospectus for such securities shall be filed with a completed and properly executed Form U-1, including all applicable exhibits thereto, a Form U-2, a Form U2A (if applicable) and the appropriate filing fee computed in accordance with T.C.A. §48-2-107(b). The registrant shall also provide, or in Item 8(k) of the Form U-1 undertake to provide promptly if unavailable on the date of filing:
 - (a) Any additional exhibits included in Part II of the applicable SEC registration statement;
 - (b) Any applicable cross-reference sheet, including but not limited to cross-reference sheets adopted by NASAA; and
 - (c) Such other information as the Division may require to determine that the offering meets applicable fairness guidelines and that the registration statement does not include any untrue statement of a material fact required to be stated therein or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading.
- (2) Only those offerings registered by coordination in this state on Forms 1-A, S-1, S-2, S-3, S-4, S-11, SB-1 and SB-2, or any successors to these forms, are subject to review under the applicable portions of rule 0780-4-2-.06.
- (3) Until such time as an applicant has complied with all filing requirements and Division comments, the applicant may waive automatic concurrent effectiveness by written notice to the Division. Once an applicant has fully complied with the filing requirements set forth in the Act and in these

rules, and has satisfied all outstanding comments issued by the Division, the Commissioner shall make the application to register effective or conditionally clear the application to register until notification of SEC effectiveness, subject to any condition or limitations imposed by the Division. The Division shall give notice by mail of the effective date of registration to each registrant, but such notice shall be conditioned upon the Division's receipt of notice from the applicant of the date that its registration statement was made effective by the SEC.

- (4) Every registration statement covering securities registered by coordination is effective for one (1) year from the effective date. Renewals of registrations by coordination may be made in accordance with rule 0780-4-2-.05.

Authority: T.C.A. §§48-2-105, 48-2-107, and 48-2-116(a).

Part 8. of subparagraph (b) of paragraph (4) of 0780-4-2-.06 Standards of Fairness and Reasonableness is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

8. "Promotional Shares" means those equity securities which were issued within three (3) years prior to the filing date or are to be issued to promoters for a consideration valued at less than eighty five percent (85%) of the proposed public offering price excluding the number of such securities calculated by dividing eighty five percent (85%) of the public offering price per share into the total consideration paid by promoters for their shares. Equity securities which were, or are to be, issued for services rendered, patents, copyrights or other intangibles are presumed to be promotional shares unless the value of such intangibles has been established to the satisfaction of the Division. In determining the consideration paid or the value of property under this definition, the Division may recognize as consideration any property, including patents, copyrights or other intangibles (except goodwill) to the extent that the fair market value of such assets is established to the Division's satisfaction. Consideration for equity securities may include the fair market value of such assets if the fair market value can be determined by an independent appraisal (according to recognized standards of valuation) that is acceptable to the Division and may also include verifiable out-of-pocket development or marketing expenses (excluding promoters' salaries) paid by promoters to the extent such expenses are not reimbursed by the issuer. Excluded from this definition shall be any shares issued to promoters at the same price paid by unaffiliated persons in offerings made pursuant to SEC Regulation D.

EXAMPLE: Calculations of number of promotional shares.

	# of shares	Total Price Paid Per Share
Shares Held by Promoters	100	\$1.00
Public Offering Price Per Share		\$10.00
Total Paid by Promoters		\$100.00
<hr/>		
Public Offering Price Per Share x .85		\$10x.85
Fully Paid Shares		\$100.00
<hr/>		
		\$8.50 = 11.77*
Shares Held by Promoters	100	
- Fully Paid Shares	-12*	
<hr/>		
Number of Promotional Shares	88	

*Rounded

Subpart (ii) of part 9. of subparagraph (b) of paragraph (4) of 0780-4-2-.06 Standards of Fairness and Reasonableness is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (ii) The security is designated on the Nasdaq National Market; or

Authority: T.C.A. §§48-2-107 and 48-2-116(a).

Part 1. of subparagraph (e) of paragraph (4) of 0780-4-2-.06 Standards of Fairness and Reasonableness is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (e) Selling Commissions and Expenses

1. The aggregate amount of underwriters' and sellers' discounts, commissions, and other compensation shall be

reasonable. Such compensation is presumed reasonable if the total of all underwriters' or sellers' compensation and other expenses in connection with the offering does not exceed fifteen percent (15%) of the gross proceeds of the offering, except that in the case of securities which qualify for registration on Forms S-B1 or S-B2 under the Securities Act of 1933 or which qualify for exemption pursuant to Regulation A under the Securities Act of 1933, the total underwriters' and sellers' compensation and all other expenses will be presumed reasonable if not in excess of twenty percent (20%) of the gross proceeds of the offering. See also subpart (c)1.(vii) of this rule.

Authority: T.C.A. §§48-2-107 and 48-2-116(a).

Item (II) of subpart (i) of part 4. of subparagraph (f) paragraph (4) of 0780-4-2-.06 Standards of Fairness and Reasonableness is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (II) After five fiscal years from the date of effectiveness, the average earnings per share are equal to five percent (5%) or more of the public offering price.

Authority: T.C.A. §§48-2-107 and 48-2-116(a).

Part 3. of subparagraph paragraph (j) of paragraph (4) of 0780-4-2-.06 Standards of fairness and Reasonableness is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- 3. Upon completion of the offering, the total amount of debt of the issuer must be reasonable in proportion to the amount of equity of the issuer. Reasonableness is to be determined in relation of the prevailing debt-equity ratios for comparable companies in the issuers' industry.

Authority: T.C.A. §§48-2-107 and 48-2-116(a).

Subparagraph (m) of paragraph (4) of 0780-4-2-.06 Standards of Fairness and Reasonableness is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (m) Future Self-Dealing Transactions. The prospectus shall contain a statement to the effect that all future transactions with affiliates of the issuer are to be on terms no less favorable than could be obtained from an unaffiliated third party and must be approved by a majority of the directors including the majority of disinterested directors.

Authority: T.C.A. §§48-2-107 and 48-2-116(a).

Subparagraph (n) of paragraph (4) of 0780-4-2-.06 Standards of Fairness and Reasonableness is amended by adding the following language designated as part 12.

12. Religious Denominations

The Guidelines for General Obligation Financing by Religious Denominations adopted by NASAA, as reported at paragraph 1951 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

Authority: T.C.A. §§48-2-107 and 48-2-116(a).

Subparagraph (a) of paragraph (2) of 0780-4-2-.07 Non-profit Exemption is amended by designating the existing language as part 1. and by adding the following language designated as part 2.:

- 2. If the issuer is selling General Obligation Financing Notes by Religious Denominations, a disclosure document prepared in accordance with the Guidelines for General Obligations Financing by Religious Denominations adopted by NASAA, as amended from time to time and as reported at paragraph 1951 of the CCH NASAA Reports. For purposes of this rule the term "General Obligation Financing" shall mean notes, certificates, or similar debt instruments issued by religious denominations that represent an obligation to repay a specific principal amount at a stated rate of interest.

Authority: T.C.A. §§48-2-103(a)7. and 48-2-116(a).

0780-4-2-.12 Notice Filings For Covered Securities is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (1) Initial notice filings for covered securities.

- (a) An initial notice filing for a covered security of an issuer to be sold in this state shall contain:
 - 1. a copy of the issuer's prospectus and statement of additional information; however, if the person making the notice filing provides an accurate filing number from the Electronic Data Gathering Access and Retrieval (EDGAR) system or other electronic data gathering access and retrieval system maintained by the SEC, or other identifying designation issued by the SEC, paper copies of the issuer's prospectus and additional information are not required to be filed with the Division;
 - 2. a completed and properly executed Form U-2, as provided under T.C.A. §48-2-124(e);
 - 3. either (i) a completed and properly executed Form NF, Form D or Form U-1, as applicable, or (ii) a copy of the issuer's federal registration statement as filed with the Securities and Exchange Commission; and
 - 4. the appropriate filing fee as set forth in T.C.A. §48-2-125.
 - (b) An issuer of a security, which is subject to the notice filing requirements for covered securities, shall make an initial notice filing with the Division prior to the sale of such security in this state, unless the security being sold is a covered security as defined under T.C.A. §48-2-102(8)(F)(iv);
 - (c) An issuer of a security that is defined as covered securities under T.C.A. §48-2-02(8)(F)(iv) shall make an initial notice filing with the Division no later than fifteen (15) days after the first sale of such covered security in this state.
- (2) Renewal of notice filings for covered securities.
- (a) A renewal of a notice for a covered security that may be renewed as provided under T.C.A. §48-2-125(c) shall consist of:
 - 1. a copy of the issuer's prospectus and statement of additional information;
 - 2. either (i) a completed and properly executed Form NF, Form D or Form U-1, as applicable, or in (ii) a copy of the

issuer's federal registration statement as filed with the Securities and Exchange Commission;

3. the appropriate filing fee as set forth in T.C.A. §48-2-125
 - (a).
 - (b) Any notice filing, subject to renewal which is not timely renewed, shall expire as provided under T.C.A. §48-2-125(c).
 - (c) A renewal of a notice filing for a covered security shall not stay the expiration of the notice filing if:
 1. such renewal is deficient, and
 2. such deficiency is not remedied prior to the expiration of the notice filing.
- (3) Deficient notice filings.
 - (a) Documents. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the Commissioner suspending the offer of sale of such covered security in this state as provided under T.C.A. §48-2-125(d), if:
 1. the filing is deficient by failing to satisfy the document filing requirements of T.C.A. §48-2-125 (a), (b), or (c) and paragraph (1)(a)1-3 of this rule, and
 2. the document deficiency is not cured within ten (10) business days of the issuer's receipt of notification from the Division.
 - (b) Fees. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the Commissioner suspending the offer or sale of such covered security in this state, as provided under T.C.A. §48-2-125 (d), if:
 1. the filing is deficient by failing to satisfy the fee requirements of T.C.A. §48-2-125 and paragraph (1)(a)(4) of this rule, and
 2. the fee deficiency is not cured within ten (10) business days of the issuer's receipt of notification from the Division.

- (c) In any case where the commissioner may issue a stop order, the issuer may be subject to further orders of the commissioner pursuant to T.C.A. §48-2-116.
- (4) Failure to make notice filings.
 - (a) Any issuer who fails to make a notice filing for a covered security to be sold in this state, as set forth under T.C.A. §48-2-125 and paragraph (1)(b) or (c) of this rule, shall be subject to a stop order of the Commissioner, as provided under T.C.A. §48-2-125(d), suspending the offer or sale of such securities in this state.
 - (b) For purposes of T.C.A. §48-2-125 (d)(2) and paragraph (4) of this rule, a failure to make a notice filing cannot be promptly remedied:
 - 1. if the security is a covered security, other than a covered security as defined under T.C.A. §48-2-102(8)(F)(iv) and the delay in making the notice filing, required under T.C.A. §48-2-125 (a), exceeds ten (10) business days from the date of the first sale of such security in this state, or
 - 2. if the security is a covered security, as defined under T.C.A. §48-2-102(8)(F)(iv), and the delay in making the notice filing required under T.C.A. §48-2-125 (b) exceeds twenty five (25) calendar days from the date of the first sale of such security in this state.
- (5) Refusal to pay notice filing fees.
 - (a) For purposes of this paragraph an issuer is deemed to refuse to pay the notice filing fee when:
 - 1. the issuer is subject to a stop order under the provisions of paragraph (3)(b) of this rule; or
 - 2. the issuer has failed to make a notice filing, as defined in paragraph (4)(b), and includes a failure to pay the appropriate notice filing fee.
- (6) Unit Investment Trusts.
 - (a) Notwithstanding any of the requirements in paragraph (1) of this rule to the contrary, notice filings of series (except the first in a series) of unit investment trusts registered with the SEC under the Investment Company Act and not engaged in the business of

investing in securities issued by one or more open end management investment companies may comply with the following alternative filing requirements:

1. One completed and properly executed Form NF, including the name and the address of the trustee, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate:
2. A statement identifying one or more previous series of the unit investment trust for which an application for registration was made effective by the Division within five (5) years preceding the filing of the current application.
3. The following representations as filed with the SEC pursuant to SEC Rule 487:
 - (i) That the portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in the previous series identified by the applicant; and
 - (ii) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment is being filed, the registration statement or pre-effective amendment does not contain disclosures that differ in any material respect from those contained in the registration statement of the previous series identified by the applicant.
4. A copy of any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities of any state or by any court or the SEC;
5. The appropriate filing fee computed in accordance with T.C.A. §48-2-125; and
6. Forms U-2 and U-2A or a statement in the transmittal letter that such forms are already on file with respect to the issuer

under its current name of each firm-commitment underwriter.

- (b) Upon SEC effectiveness, the following shall be filed with the Division;
 - 1. Notice of SEC effectiveness, to include:
 - (i) The full name of each series of the unit investment trust registered with the SEC;
 - (ii) The time and date declared effective by the SEC;
 - (iii) The public offering price per unit;
 - (iv) The amount of sales commission per unit;
 - (v) The number of units registered with the SEC; and
 - (vi) The total aggregate dollar amount of the offering.
 - 2. One copy of the post-effective amendment containing one copy of the final prospectus.
- (c) Each series underlying a unit investment trust constitutes a separate and distinct security under the Act and shall be separately notice filed under the Act. Unit investment trusts applying to notice file multiple series shall file separate notices for each series containing all of the information specified in subparagraph (a) above, with each Form NF specifically identifying the series to be notice filed.
- (d) The Commissioner may deny, suspend or revoke the availability of this paragraph (6) to a unit investment trust if it appears to the Commissioner that a notice filing that is or is intended to become effective in this state in reliance upon this paragraph is incomplete or inaccurate in any material respect or the filer has not complied with the requirements set forth in this paragraph (6).
- (e) The notice filing of a unit investment trust expires one year from the date of SEC effectiveness, subject to T.C.A. §48-2-125.

Authority: T.C.A. §§48-2-116, 48-2-108, 48-2-125; Public Acts of 1997, Chapter 164, Section 8; §18 of the Federal Securities Act of 1993, as amended by the National Securities Markets Improvement Act of 1996.

0780-4-3
Industry Regulation

Amendments

Paragraph (2) of 0780-4-3-.01 Registration is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the paragraph shall read as follows:

(2) Agent Registration

(a) CRD System Eligible Agent Applicants

1. All agent applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following:
 - (i) A Form U4 and all information and exhibits required by such form;
 - (ii) The appropriate application fee as set forth by the Act; and
 - (iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.
2. Agents applying for registration through the CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Agent Applicants. All applications for registration as an agent other than those specified in subparagraph (a) above shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such form;
2. The appropriate application fee as set forth by the Act;
3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.
- (c) An application is deemed filed for purposes of T.C.A. §48-2-110(a)(4) and this rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (a) or parts (b) 1. through 4. above is received by the Division.
 - (d) All agents who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of all other agents must be submitted directly to the Division and must contain the following:
 1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and
 2. The appropriate fee as set forth in the Act.
 - (e) The registration of an agent shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an agent shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The Commissioner may institute a revocation or denial proceeding under T.C.A. §48-2-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the CRD System, or for non CRD System agents, the date upon which the Form U5 is received directly by the Division.
 - (f) There is no provision under the Act to transfer an individual agent's registration. When an agent terminates his relationship with a broker-dealer with whom he is registered and commences a new relationship with an other broker-dealer, a termination of registration shall be effected by the broker-dealer with which the individual agent had the prior relationship and an application for initial registration shall be filed by the broker-dealer with which

the individual agent proposes to have the new relationship. The termination of registration shall be effected by the broker-dealer by submitting a Form U5 through the CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (f) are not required in the event of a mass transfer of agent registrations pursuant to CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-2-110(c).

- (g) All agent applicants who have voluntarily terminated registration with a broker-dealer and who are eligible under the rules established by the CRD System may apply for temporary registration with another broker-dealer through the CRD System by complying with the procedure required by the CRD System. In the case of all other voluntary terminations of a non-CRD agent's registration with a particular broker-dealer pursuant to subparagraph (f), the Division may, in its discretion, allow the agent to be temporarily registered with the broker-dealer with whom the agent is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other broker-dealer. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment

1. The Division may determine that an application to register an agent has been abandoned if:
 - (i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
2. Upon the determination that an application through the CRD System has been abandoned, the Division shall, as

provided through the routine operation of the CRD System, cancel such application without prejudice.

3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

Authority: T.C.A. §§48-2-109, 48-2-110 and 48-2-116 (a); §222 of the Investment Advisers Act of 1940 as amended by §304 (c) of the National Securities Markets Improvement Act of 1996.

Paragraph (3) of 0780-4-3-.01 Registration is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the paragraph shall read as follows:

(3) Investment Adviser Registration

(a) IARD Eligible Investment Advisers

1. All investment advisers who are eligible must apply for initial registration in Tennessee through the IARD by complying with the electronic application procedures required by the IARD. The application filed through the IARD shall contain the following, unless waived by order of the Commissioner:
 - (i) A Form ADV and all information and exhibits required by such form; and
 - (ii) The appropriate application fee as set forth in the Act; and
 - (iii) Satisfaction of the investment adviser representative examination requirements under rule 0780-4-3-.01(10) by appropriate executive officers or principals of the applicant.
2. Investment advisers applying through the IARD shall also, concurrently with the filing of an application to the IARD, file with the Division, unless waived by order of the Commissioner:

- (i) (I) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its by-laws certified by the secretary of the corporation.
 - (II) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner.
 - (III) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed and a copy of its operating agreement, if any, certified by a managing member.
- (ii) (I) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this subsection (I), "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or
- (II) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with Rule 0780-4-3-.02(4)(a)2. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and

liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit; and

- (iii) Such other information as the Division may request of a particular applicant to determine eligibility for registration.
- (b) Other Investment Adviser Applicants. All applications for initial registration as an investment adviser other than those specified in subparagraph (a) above shall be submitted in paper format to the IARD or directly to the Division and shall contain the following information, unless waived by order of the Commissioner:
- 1. A Form ADV and all information and exhibits required by such form;
 - 2. The appropriate application fee as set forth in the Act;
 - 3.
 - (i) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its by-laws certified by the secretary of the corporation.
 - (ii) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner.
 - (iii) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed and a copy of its operating agreement certified by a managing member;
 - 4.
 - (i) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such

application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this subpart (i), "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or

- (ii) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with Rule 0780-4-3-.02(4)(a)2. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant's first annual audit.
- 5. Satisfaction of the investment adviser representative examination requirements under rule 0780-4-3-.01(10) by appropriate executive officers or principals of the applicant.
 - 6. Such other information as the Division may request of a particular applicant to determine eligibility for registration.
 - 7. Evidence of a temporary exemption; or, prior to December 31, 2003, evidence of a continuing hardship exemption as issued by the Division or another state securities administrator, which exempts the applicant from the requirements to make electronic filings through IARD as required by subparagraphs (a) and (e) herein.

- (c) Hardship Exemptions. This subparagraph provides two "hardship exemptions" from the requirements to make electronic filings through IARD as required by the subparagraphs (a) and (e) herein and by rule 0780-4-3-.02(4)(d) Investment Adviser Reporting Requirements.

1. Temporary Hardship Exemption.

- (i) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.
- (ii) To request a temporary hardship exemption, the investment adviser must:
 - (I) File Form ADV-H in paper format with the state securities administrator where the investment adviser's principal place of business is located, or the Division if appropriate, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and
 - (II) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven (7) business days after the filing was due.
- (iii) Effective Date Upon Filing. The temporary hardship exemption will be deemed effective by the Commissioner upon receipt of the complete Form ADV-H by the state securities administrator where the investment adviser's principal place of business is located or with the Division if such other state securities administrator does not routinely process applications for temporary hardship exemptions. Multiple temporary hardship exemption requests within the same calendar year may be allowed or disallowed at the discretion of the Commissioner.

2. Continuing Hardship Exemption.

- (i) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate to the satisfaction of the Commissioner that the electronic filing requirements of these rules are prohibitively burdensome.
- (ii) To apply for a continuing hardship exemption, the investment adviser must:
 - (I) File Form ADV-H in paper format with the appropriate state securities administrator, or the Division if appropriate, at least twenty (20) business days before a filing is due; and
 - (II) If a filing is due to more than one (1) state securities administrator, the Form ADV-H must be filed with the state securities administrator where the investment adviser's principal place of business is located or with the Division if such state securities administrator does not routinely process applications for continuing hardship exemptions. If the Division is the state securities administrator which receives the application for a continuing hardship exemption, the Commissioner will grant or deny the application within ten (10) business days after the filing of Form ADV-H or within ten (10) business days after the receipt of further information or materials requested from the investment adviser by the Division to determine eligibility for such exemption.
- (iii) Effective Date Upon Approval. The exemption is effective upon approval by the state securities administrator where the investment adviser's principal place of business is located or by the Commissioner, whichever is appropriate. The time period of the exemption may be no longer than one (1) year after the exemption approval date. Upon such approval, the investment adviser must, no later than five (5) business days after the exemption approval date, commence submitting necessary filings to IARD in paper format (along with the

appropriate processing fees), or to the Division whichever is appropriate, for the period of time for which the exemption is granted.

3. Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the state securities administrator where the investment adviser's principal place of business is located or the Commissioner whichever is appropriate. Approval of an exemption by an appropriate state securities administrator in another state will be recognized and accepted by the Commissioner except that the Commissioner will not grant, accept or recognize any continuing hardship exemption after December 31, 2003.
- (d) An application is deemed filed for purposes of T.C.A. §48-2-110(a)(4) and this rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraphs (a) or (b) is received by the Division.
 - (e) All investment advisers who are eligible must apply for renewal of registration in Tennessee through the IARD by complying with the requirements of the IARD. Applications for renewal of other investment advisers must be submitted directly to the Division and must contain the following.
 1. The appropriate renewal form as prescribed by the Division and all information and exhibits required by such form; and
 2. The appropriate fee as set forth in the Act.
 - (f) The registration of an investment adviser shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as an investment adviser shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The Commissioner may institute a revocation or denial proceeding under T.C.A. §48-2-112 within thirty (30) days after the filing date of application to withdraw on Form ADV-W by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form ADV-W or a written request filed on behalf

of an applicant through the IARD or through a direct filing with the Division, whichever is appropriate, is actually received by the Division.

(g) Abandonment

1. The Division may determine that an application to register an investment adviser has been abandoned if:
 - (i) The application has been on file with the Division for more than one hundred eighty (180) days without the applicant becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
2. Upon the determination that an application has been abandoned, the Commissioner shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

Authority: T.C.A. §§48-2-109, 48-2-110 and 48-2-116 (a); §222 of the Investment Advisers Act of 1940 as amended by §304 (c) of the National Securities Markets Improvement Act of 1996.

Paragraph (8) of 0780-4-3-.01 Registration is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the paragraph shall read as follows:

- (8) Withdrawal of Applications. An application for registration as a broker-dealer or investment adviser may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD System and the IARD or, for other broker-dealers and other investment advisers, by filing a written request for withdrawal directly with the Division. An application for registration as an agent or investment adviser representative may be withdrawn prior to the effectiveness of the registration by following the procedures established by the CRD System

or IARD, or, for other agents and other investment adviser representatives, by filing a written request for withdrawal directly with the Division.

Authority: T.C.A. §§48-2-109, 48-2-110, 48-2-115(f) and 48-2-116 (a); §222 of the Investment Advisers Act of 1940 as amended by §304 (c) of the National Securities Markets Improvement Act of 1996.

0780-4-3-.01 Registration is amended by adding the following language designated as Paragraph (9):

(9) Investment Adviser Representative Registration

(a) IARD and CRD System Eligible Investment Adviser Representative Applicants

1. All investment adviser representative applicants who are eligible must apply for initial registration in Tennessee through the IARD and CRD System by complying with the application procedures required by the IARD and CRD System. The application filed through the IARD and CRD System shall contain the following:
 - (i) A Form U4 and all information and exhibits required by such form;
 - (ii) The appropriate application fee as set forth by the Act; and
 - (iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.
2. Investment adviser representatives applying for registration through the IARD and CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Investment Adviser Representative Applicants. All applications for registration as an investment adviser representative other than those specified in subparagraph (a) above shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such form;
 2. The appropriate application fee as set forth by the Act;
 3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and
 4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.
- (c) An application is deemed filed for purposes of T.C.A. §48-2-110(a)(4) and this rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (a) or parts (b) 1, through 4, above is received by the Division.
- (d) All investment adviser representatives who are eligible must apply for renewal of registration in Tennessee through the IARD and CRD System by complying with the requirements of the IARD and CRD System. Applications for renewal of all other investment adviser representatives must be submitted directly to the Division and must contain the following:
1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and
 2. The appropriate fee as set forth in the Act.
- (e) The registration of an investment adviser representative shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an investment adviser representative shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The Commissioner may institute a revocation or denial proceeding under T.C.A. §48-2-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which notice

of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the IARD and CRD System, or for non-IARD and CRD System investment adviser representatives, the date upon which the Form U5 is received directly by the Division.

- (f) There is no provision under the Act to transfer an individual investment adviser representative's registration. When an investment adviser representative terminates his relationship with an investment adviser with whom he is registered and commences a new relationship with an other investment adviser, a termination of registration shall be effected by the investment adviser with which the individual investment adviser representative had the prior relationship and an application for initial registration shall be filed by the investment adviser with which the individual investment adviser representative proposes to have the new relationship. The termination of registration shall be effected by the investment adviser by submitting a Form U5 through the IARD and CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (f) are not required in the event of a mass transfer of investment adviser representative registrations pursuant to IARD and CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. §48-2-110(c).
- (g) All investment adviser representative applicants who have voluntarily terminated registration with an investment adviser and who are eligible under the rules established by the IARD and CRD System may apply for temporary registration with another investment adviser through the IARD and CRD System by complying with the procedure required by the IARD and CRD System. In the case of all other voluntary terminations of a non-IARD and CRD System eligible investment adviser representative's registration with a particular investment adviser pursuant to subparagraph (f), the Division may, in its discretion, allow the investment adviser representative to be temporarily registered with the investment adviser with whom the investment adviser representative is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other investment adviser. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment

1. The Division may determine that an application to register an investment adviser representative has been abandoned if:
 - (i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or
 - (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.
 2. Upon the determination that an application through the IARD and CRD System has been abandoned, the Division shall, as provided through the routine operation of the IARD and CRD System, cancel such application without prejudice.
 3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.
- (i) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-2-110(c)(2), and who has no place of business located within this state, is not required to register as an investment adviser representative of such investment adviser in this state.
 - (j) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. §48-2-110(c)(2), and who is not included in the definition of "investment adviser representative" which appears in SEC Rule 275.203A-3 under the Investment Advisers Act, is not required to register as an investment adviser representative of such investment adviser in this state.

- (k) An individual who solicits, offers, offers or negotiates for sale of or sells investment advisory services, but who is not compensated directly or indirectly for such activities, is not required to register as an investment adviser representative in this state.

Authority: T.C.A. §§48-2-102, 48-1-109, 48-2-110, 48-2-115(f) and 48-2-116(a); §222 of the Investment Advisers Act of 1940 as amended by §304(c) of the National Securities Markets Improvement Act of 1996.

0780-4-3-.01 Registration is amended by adding the following language designated as Paragraph (10):

(10) Examination of Investment Adviser Representatives

- (a) Each applicant for initial registration as an investment adviser representative:
 - 1. Shall receive a passing grade on the Uniform Investment Adviser Law Examination (UIALE/Series 65) as administered by NASD; or
 - 2. Shall receive passing grades on the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (UCSLE/Series 66) as administered by NASD; or
 - 3. Shall have been registered as an investment adviser representative in any state within the preceding twenty-four (24) months; or
 - 4. Shall currently hold one of the following professional designations:
 - (i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
 - (ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA;
 - (iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

- (iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
 - (v) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.
- (b) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (10), a duly granted examination waiver by the NASD, the New York Stock Exchange or the SEC shall constitute a passing grade for the General Securities Representative Examination (Series 7) requirement of part (a)2. and subparagraph (c) herein.
- (c) Each applicant who demonstrates eligibility for initial registration by receiving a passing grade on the examinations delineated in parts (a)1. and (a)2. herein:
 - 1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or
 - 2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity appropriate to the required examination within the preceding twenty-four (24) months.
- (d) The requirements of this paragraph (10) shall apply to all applications for investment adviser registration and investment adviser representative registration filed with the Division on or after April 1, 2004.

Authority: T.C.A. §§48-2-102, 48-2-109, 48-2-110 and 48-2-116(a); §222 of the Investment Advisers Act of 1940 as amended by §304(c) of the National Securities Markets Improvement Act of 1996.

Paragraph (1) of 0780-4-3-.02 Post Registration is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the paragraph shall read as follows:

- (1) Broker-Dealer Required Records

- (a) Every broker-dealer registered in this state shall make and keep current the following books and records relating to its business, unless waived by order of the Commissioner.
1. Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities (including certificate number), all receipts and disbursements of cash and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, the settlement date, the name or other designation of the person from whom purchased or received or to whom sold or delivered, and some identification of the agent effecting the transaction.
 2. Ledgers reflecting all assets and liabilities, income and expense and capital accounts.
 3. Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners or principals thereof, all purchases, sales, receipts and deliveries of securities and commodities for such accounts and all other debits and credits to such accounts.
 4. Ledgers (or other records) reflecting the following:
 - (i) Securities in transfer;
 - (ii) Dividends and interest received;
 - (iii) Securities borrowed and securities loaned;
 - (iv) Monies borrowed and monies loaned (together with a record of the collateral thereof and any substitutions in such collateral);
 - (v) Securities failed to receive and failed to deliver; and
 - (vi) A record of all puts, calls, spreads, and straddles and other options in which the broker dealer has any direct or indirect interest or which it has granted or guaranteed, containing at least identification of the security and the number of units involved.

5. A memorandum of each order (order ticket) and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted the memorandum shall show the terms and conditions of the order or instruction, any modification or cancellation thereof, the account for which entered, whether the transaction was unsolicited, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof shall be so designated. The term "time of entry" shall mean the time when the broker-dealer transmits the order instructions for execution, or, if it is not so transmitted, the time when it is received.
6. A memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution.
7. Copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners or principals of the broker-dealer.
8. A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers, partners, or principals showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried.
9. Copies of all communications, correspondence, and other records relating to securities transactions with customers.
10. A separate file containing all written complaints made or submitted by customers to the broker-dealer or agents relating to securities transactions.
11. A customer information form (new account information worksheet) for each customer. If recommendations are to be made to the customer, the form shall include such information as is necessary to determine suitability.

12. For each cash or margin account established and maintained with the broker-dealer, copies of all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority with respect to the account, the name and address of the beneficial owner of each account, and all margin and lending agreements; provided that in the case of a joint account, or of an account of a corporation, the records are required only as to persons authorized to transact business for the account.
 13. A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be prepared currently at least once a month.
 14. All partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books of the broker-dealer.
 15. A separate file containing copies of all advertising circulated by the broker-dealer in the conduct of its securities business.
 16. A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its capital on Form C-17A-5, as adopted by the SEC (FOCUS Report), if the broker-dealer is a broker-dealer described in rule 0780-4-3-.01(5)(a). Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed by rule 0780-4-3-.01(5).
 17. All records required under rule 17a-3 promulgated under the 1934 Act not otherwise delineated in this paragraph (1).
 18. All records made and kept pursuant to section 17(f)(2) and rule 17f-2 under the 1934 Act.
- (b) All records required to be kept by subparagraph (a) hereof shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by rule 17a-4 promulgated

under the 1934 Act, whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

- (c) All broker-dealers who act as investment advisers shall maintain the records required by subparagraph (3)(a) of this rule.

Authority: T.C.A. §§48-2-111(a) and 48-2-116(a); §222 of the Investment Advisers Act of 1940 as amended by §304(a) of the National Securities Markets Improvement Act of 1996. §§203A, 205 and 215 of the Investment Advisers Act of 1940.

Rule 0780-4-3-.02 Post Registration is amended by adding the following language designated as Paragraph (8):

- (8) Investment Adviser Representative Reporting Requirements
 - (a) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-2-109(c)(2), a copy of:
 - 1. Any indictment or information filed in any court of competent jurisdiction naming the investment adviser representative and alleging the commission of any felony regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment related business.
 - 2. Any complaint filed in any court of competent jurisdiction naming the investment adviser representative and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and
 - 3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser representative and related to the investment adviser representative's securities or investment-related business.

- (b) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-2-109(c)(2), a copy of any answer, response or reply to any complaint, indictment or information described in parts 1. through 3. above.
- (c) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. §48-2-109(c)(2), a copy of any decision, order or sanction that is made, entered or imposed with respect to any proceeding described in parts 1. through 3. above.
- (d) Nothing in this rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these rules or in the Act.

Authority: T.C.A. §§48-2-102, 48-2-109, 48-2-111(a) and 48-2-116(a); §222 of the Investment Advisers Act of 1940 as amended by §304(a) of the National Securities Markets Improvement Act of 1996. §§203A, 205 and 215 of the Investment Advisers Act of 1940.

Subparagraph (c) of paragraph (6) of 0780-4-3-.02 Post Registration is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the subparagraph shall read as follows:

(6) Prohibited Business Practices

- (c) The following are deemed “dishonest or unethical business practices” by an investment adviser or an investment adviser representative under T.C.A. §48-2-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein;

1. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer;
2. Placing an order for the purchase or sale of a security pursuant to discretionary authority if the purchase or sale is in violation of the Act or any rule thereunder;
3. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
4. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer;
5. Executing a transaction on behalf of a customer without authority to do so;
6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;
7. Failing to segregate customers' free securities or securities in safekeeping;
8. Hypothecating a customer's securities without having a lien permitted by rules of the SEC;
9. Entering into a transaction for its own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the NASD is unreasonable;

10. Placing an order to purchase or sell security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client;
11. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;
12. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service);
13. Charging a client an unreasonable advisory fee;
14. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
 - (i) Compensation agreements connected with advisory services to clients, which are in addition to compensation from such clients for such services; and
 - (ii) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions, pursuant to such advice, will be received by the adviser or its employees;

15. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;
16. Publishing, circulating or distributing any advertisement which does not comply with rule 0780-4-3-.09 under the Act;
17. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;
18. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of rule 0780-4-3-.07 under the Act;
19. Entering into, extending or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:
 - (i) the services to be provided,
 - (ii) the term of the contract,
 - (iii) the advisory fee,
 - (iv) the formula for computing the fee,
 - (v) the amount of prepaid fee to be returned in the event of contract termination or non- performance,
 - (vi) whether the contract grants discretionary power to the adviser, and
 - (vii) that no assignments of such contract shall be made by the investment adviser without the consent of the other party to the contract;
20. Failing to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of the Investment Advisers Act or the 1934 Act, or the rules or regulations promulgated thereunder, of material, non-public

information by such investment adviser or any person associated with such investment adviser;

21. Entering into, extending or renewing any advisory contract which would violate section 205 of the Investment Advisers Act;
22. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act, or any other practice that would violate section 215 of the Investment Advisers Act;
23. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this Act or any rule or regulation thereunder;
24. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;
25. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser; and
26. Failing to provide information requested by the Division pursuant to the Act or the rules promulgated thereunder.

Authority: T.C.A. §§48-2-112(a)(2)(G) and 48-2-116 (a); §222 of the Investment Advisers Act of 1940 as amended by §304(a) of the National Securities Markets Improvement Act of 1996. §§203A, 205 and 215 of the Investment Advisers Act of 1940.

Item (III) of subpart (i) of part 4. of subparagraph (a) of paragraph (1) of 0780-4-3-.04 Persons Not Deemed To Be Broker-Dealers is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (III) That are made pursuant to any of the events described in T.C.A. §48-2-102(15)(F).

Authority: T.C.A. §§48-2-102, 48-2-110(f) and 48-2-116(a).

Paragraph (1) of 0780-4-3-.06 Investment Adviser Notice Filings is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (1) A person who is required to register as an investment adviser pursuant to Section 203 of the Investment Advisers Act and who is an investment adviser as defined by T.C.A. §48-2-102 shall make the following filings with the Division through the IARD by complying with the filing procedures of the IARD:
 - (a) An initial investment adviser notice filing shall be filed ten (10) days prior to acting as an investment adviser and shall contain the following:
 - 1. A Form ADV, and all information and exhibits required by such form, as submitted to the SEC; and
 - 2. The appropriate notice filing fee as set forth in the Act unless the investment adviser has previously paid the appropriate investment adviser registration filing fee for the current registration period.
 - (b) A renewal investment adviser notice filing and the appropriate renewal fee as set forth in the Act shall be filed pursuant to the renewal procedures of the IARD for each successive calendar year as is necessary in order to sustain compliance with T.C.A. §48-2-109(c)(2).
 - (c) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent notice filing shall be set forth in an amendment to Form ADV and filed promptly with the Division through the IARD.

Authority: T.C.A. §§48-2-102, 48-2-109, 48-2-116(a); §307(a) of the National Securities Markets Improvement Act of 1996.

Paragraph (1) of 0780-4-3-.11 Persons Deemed Not To Be "Agents" is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (1) An individual associated person of a broker-dealer shall be exempt from the definition of “agent” as defined under T.C.A. §48-2-102 if such individual associated person effects any of the two (2) types of transactions in securities described in paragraph (2) of this rule for a customer in this state and satisfies the following conditions:
 - (a) such individual associated person is not ineligible to register in this state for any reason other than such a transaction in securities;
 - (b) such individual associated person is registered with a securities association registered under the 1934 Act and is also registered in at least one state; and
 - (c) the broker-dealer with which such individual person is associated is appropriately registered in this state.

Authority: T.C.A. §§48-2-102 and 48-2-116(a); §15 of the Securities and Exchange Act of 1934, as amended by §103(a)(2) of the National Securities Markets Improvement Act of 1996.

Paragraph (1) of 0780-4-3-.12 Definition of “Client Of An Investment Adviser” is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (1) Preliminary note. This rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of T.C.A. §48-2-102(10)(E)(ii) and 48-2-102(10)(F) of the Act.

Authority: T.C.A §§48-2-116(a) and 48-2-102; §222 of the Investment Advisers Act of 1940, as amended by §304(d) of the National Securities Markets Improvement Act of 1996; 17 CFR §275.203(b)(3)-1.

Paragraph (2) of 0780-4-3-.12 Definition of “Client Of An Investment Adviser” is amended by deleting the language contained therein in its entirety and by replacing it with the following so that, as amended, the rule shall read as follows:

- (2) General. For purposes of T.C.A. §48-2-102(10)(E)(ii) and 48-2-102(10)(F), the following are deemed a single client:
 - (a) A natural person, and:

1. Any minor child of the natural person;
 2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
 3. All accounts of which the natural person and/or the persons referred to in this paragraph (2)(a) are the only primary beneficiaries;
 4. All trusts of which the natural person and/or the persons referred to in this paragraph (2)(a) are the only primary beneficiaries;
- (b)
1. A corporation, general partnership, limited liability company, trust (other than a trust referred to in paragraph (2)(a)4, of this selection), or other legal organization (any of which are referred to hereinafter as a “legal organization”) that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partner, members, or beneficiaries (any of which are referred to hereinafter as a “owner”); and
 2. Two or more legal organizations referred to in paragraph(2)(b)1. of this section that have identical owners.

Authority: T.C.A §§48-2-116(a) and 48-2-102; §222 of the Investment Advisers Act of 1940, as amended by §304(d) of the National Securities Markets Improvement Act of 1996; 17 CFR §275.203(b)(3)-1.

Chapter 0780-4-2

Securities Registration and Exemptions

New Rules

Table of Contents

0780-4-2-.15 Bank Holding Company Exemption

0780-4-2-.15 Bank Holding Company Exemption.

- (1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities by a bank holding company or a savings and loan holding company must file with the Commissioner no later than ten (10) days prior to the first sale:
 - (a) One copy of the Form U-1, Uniform application to Register Securities;
 - (b) A Form U-2 Uniform Consent to Service of Process;
 - (c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;
 - (d) A non-refundable filing fee in the amount of \$100.00; and
 - (e) A copy of all sales or advertising literature used or proposed to be used.

Authority: T.C.A. §§48-2-103(a)(13) and 48-2-116(a).

Chapter 0780-4-3
Industry Regulation

New Rules

Table of Contents

0780-4-3-.15 Exemption from Broker-Dealer Registration for Certain Canadian Broker-Dealers

0780-4-3-.15 Exemption from Broker-Dealer Registration for Certain Canadian Broker-Dealers.

- (1) Prior to effecting any securities transaction pursuant to the exemption from broker-dealer registration authorized by T.C.A. §48-2-109(g), a Canadian broker-dealer must receive acknowledgment from the Division of its receipt of English language versions of the following exhibits:
 - (a) Initial exemption notice filing which contains the following:
 1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Evidence of membership in an appropriate Canadian self-regulatory organization, stock exchange or association of broker-dealers;
 3. Evidence of broker-dealer registration in the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;
 4. Copy of the disclosure which will be made to customers that the Canadian broker-dealer is not subject to the full regulatory requirements of the Act;
 5. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;
 6. Evidence of registration in the appropriate Canadian provincial or territorial jurisdiction for each individual identified pursuant to part (a)5. herein;
 7. Form U-2 Uniform Consent to Service of Process;
 8. The appropriate fee as set forth in the Act; and
 9. Such other information as the Division may request from a particular Canadian broker-dealer to determine eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-2-109(g).
- (2) Each exemption notice filing expires each December 31 unless timely renewed. An exemption notice filing is timely renewed for the next successive calendar year if English language versions of the following exhibits are received by the Division on or after November 1 and on or before the immediately following December 31:
- (a) Renewal exemption notice filing which contains the following:
 1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;
 3. The appropriate fee as set forth in the Act; and
 4. Such other information as the Division may request from a particular Canadian broker-dealer to determine continuing eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. §48-2-109(g).
- (b) Exemption notice filings for which incomplete renewal exemption notice filings have been submitted will expire at the relevant December 31 unless completed by the filer on or before that December 31.
- (3) Abandonment
- (a) The Division may determine that an incomplete initial exemption notice filing has been abandoned if:
1. An incomplete filing has been on file with the Division for more than one hundred eighty (180) days without becoming completed and no written communication has been received by the Division from the filer in connection with the filing during such period; or
 2. A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the filer.
- (b) Upon the determination that an incomplete initial exemption notice filing has been abandoned, the Division may cancel the incomplete filing without prejudice and, within thirty (30) days of such cancellation, mail a notice of the cancellation to the last known business address of the filer.
- (4) Termination and Withdrawal
- (a) A Canadian broker-dealer may terminate its initial exemption notice filing or renewal exemption notice filing by filing a written request for termination directly with the Division. Annual fees

previously received by the Division in conjunction with such terminated exemption notice filings are nonrefundable.

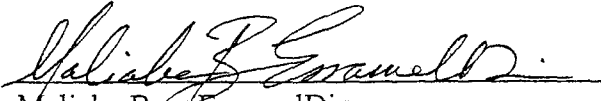
- (b) An incomplete initial exemption notice filing, a renewal exemption notice filing or an incomplete renewal exemption notice filing may be withdrawn by the Canadian broker-dealer by filing a written request for withdrawal directly with the Division. Annual fees previously received by the Division in conjunction with such withdrawn exemption notice filings are nonrefundable.
 - (c) A Canadian broker-dealer which has filed an initial or renewal exemption notice filing and which has become ineligible for the exemption from broker-dealer registration authorized by T.C.A. §48-2-109(g) shall immediately notify the Division in writing of the cause of such ineligibility and shall simultaneously, as is appropriate, request a termination or withdrawal pursuant to subparagraphs (4)(a) or (4)(b) herein.
- (5) The filings herein required shall constitute filings with the Commissioner pursuant to T.C.A. §48-2-121(c).

Authority: T.C.A. §§48-2-102, 48-2-109(g) and 48-2-116(a).

Legal Contact and/or party who will approve final copy: Maliaka Bass EssamelDin
500 James Robertson Pkwy
Davy Crockett Tower, 5th Fl.
Nashville, Tennessee 37243
(615) 741-2199

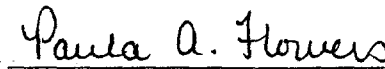
Contact for disk acquisition: Maliaka Bass EssamelDin
500 James Robertson Pkwy
Davy Crockett Tower, 5th Fl.
Nashville, Tennessee 37243
(615) 741-2199

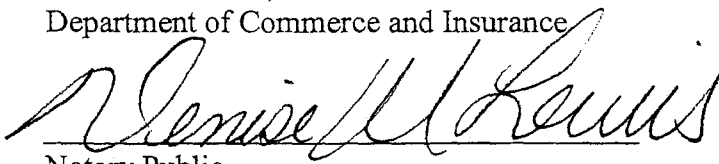
Signature of agency or officers directly responsible for proposing and/or drafting these rules:


Maliaka Bass EssamelDin
Chief Counsel for Securities

I certify that this is an accurate and complete copy of the rulemaking hearing rules lawfully promulgated and adopted by the Department of Commerce and Insurance on the 7 day of November, 2003.

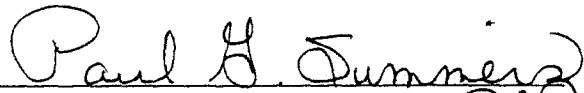
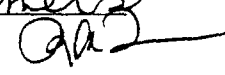
Further, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that these rules were properly presented for filing, a notice of rulemaking was filed in the Department of State on the 30th day of June, 2003 and such notice of the rulemaking hearing having been published in the July, 2003 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 15th day of August, 2003.


Paula A. Flowers, Commissioner
Department of Commerce and Insurance


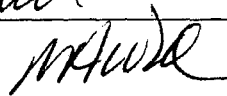

Notary Public

My Commission Expires: My Commission Expires MAR. 27, 2004

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to the legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Paul G. Summers
Attorney General and Reporter 

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 5 day of April, 2003. *effective 6/19/04*


Riley C. Darnell
Secretary of State 

RECEIVED
2004 APR -5 PM 3:41
SECRETARY OF STATE
PUBLICATIONS